

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RONALD E. CHRISTENSON

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Appeal No. 97-1175  
Application No. 08/383,361<sup>1</sup>

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ON BRIEF

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Before CALVERT, STAAB, and NASE, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the refusal of the examiner to allow claims 3, 8, 11 to 14 and 16 to 20, as amended

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<sup>1</sup> Application for patent filed February 3, 1995.

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Application No. 08/383,361

subsequent to the final rejection.<sup>2</sup> These claims constitute all of the claims pending in this application.

We AFFIRM.

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<sup>2</sup> While the examiner has approved entry of the amendment after final rejection (Paper No. 6, filed February 14, 1996), we note that this amendment has not been clerically entered.

BACKGROUND

The appellant's invention relates to replaceable ejector slide tubes. An understanding of the invention can be derived from a reading of exemplary claim 12, which appears in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Herpich et al. (Herpich)	2,800,234	July
23, 1957		
Telesio	3,899,090	Aug. 12,
1975		

Claims 3, 8, 11 to 14 and 16 to 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Telesio in view of Herpich.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the examiner's answer (Paper No. 10, mailed August 16, 1996) for the examiner's complete reasoning in support of the rejection, and to the appellant's

brief (Paper No. 9, filed May 8, 1996) and reply brief (Paper No. 11, filed September 23, 1996) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is sufficient to establish obviousness with respect to the claims under appeal. Accordingly, we will sustain the examiner's rejection of claims 3, 8, 11 to 14 and 16 to 20 under 35 U.S.C.

§ 103. Our reasoning for this determination follows.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be

expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

With this as background, we analyze the prior art applied by the examiner in the rejection of the claims on appeal.

Telesio discloses a packer plate guide for refuse collection vehicles. As shown in Figure 1, Telesio's refuse collection vehicle 10 includes a packer plate 20 mounted inside the vehicle storage bin 18. In one form of Telesio's invention, elongated guide shoes 64 having galvanized surfaces 66 are mounted on opposite sides of the packer plate 20, and the guide shoes 64 slide on galvanized surfaces 52 of corresponding guide members 48 affixed to opposite sides of the storage bin interior. As shown in Figure 3, each guide shoe 64 is rigidly secured to a side structural member 68 of the packer plate by top and bottom welds 70 and 72, respectively, extending along the length of the guide shoe. Telesio teaches (column 5, lines 29-32) that the guide members 48 and shoes 64 are

relatively easily removable from the storage bin for repair or reconditioning of their sliding surfaces.

Herpich discloses a vehicle body with packing and ejector plate means. As shown in Figure 1, a platen P is designed to be reciprocated longitudinally of the body B by a set T of cylinders. As best shown in Figures 1 and 2, the platen P includes a base 6 and a plate 7. As shown in Figures 4 and 5, the base 6 includes two side members 12, flanges 14 and shoes 15, 16 secured to the flanges 14 in any suitable manner as by bolts or rivets 18. The shoes are designed to have sliding engagement with complementary, enclosed metal housings 17 that are attached to each side wall 1 of the body B.

**Claim 12**

Claim 12 recites, inter alia, an ejector mechanism for a refuse truck carried along and supported by a pair of slide systems carried in a pair of spaced parallel ejector rails. Claim 12 further recites that the improvement comprises "a pair of replaceable slide members, one attached to each side of the ejector mechanism by removable attaching means such

that each entire slide member can be readily removed and replaced."

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Telesio and claim 12, it is our opinion that the only difference is the limitation that each slide member is attached to the ejector mechanism by removable attaching means such that each entire slide member can be readily removed and replaced.

With regard to this difference, the examiner determined (answer, p. 3) that it would have been obvious to "have removably attached the slide members [Telesio's guide shoes 64] to the ejector mechanism [Telesio's packer plate 20] by reusable attaching means to facilitate disassembly as taught by Herpich." We agree.



The appellant's arguments (brief, pp. 7-12) are unpersuasive for the following reasons. Contrary to the appellant's assertion, it is our view that the references do contemplate replacement of their shoes. In that regard, Telesio specifically teaches (column 5, lines 29-32) that the guide shoes 64 are relatively easily removable from the storage bin for repair or reconditioning of their sliding surfaces. In addition, it is our opinion that one skilled in the art would reasonably be expected to draw an inference that Herpich discloses the use of bolts 18 in order to permit the easy assembly and disassembly of the shoes 15, 16 to the flanges 14. In view of Telesio's teaching and the inference drawn from Herpich, it is clear to us that the applied prior art does not teach away from the claimed invention, but rather suggests the claimed invention. Thus, it is our determination that the combined teachings of Telesio and Herpich would have suggested bolting Telesio's guide shoes 64 to the side structural members 68 of the packer plate 20 instead of using top and bottom welds.

For the reasons set forth above, the decision of the examiner to reject claim 12 under 35 U.S.C. § 103 is affirmed.

**Claims 13 and 20**

Claims 13 and 20 have not been separately argued by the appellant. Accordingly, these claims will be treated as falling with claim 12. See In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987); and In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978). Thus, it follows that the decision of the examiner to reject claims 13 and 20 under 35 U.S.C. § 103 is also affirmed.

**Claims 3, 8, 11, 14 and 16 to 19**

The appellant argues (brief, p. 11) that the features recited in claims 3, 8, 11, 14, 16 and 17 are not shown in the cited prior art.<sup>3</sup>

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<sup>3</sup> Claims 18 and 19 are dependent on claim 3.

The appellant's argument is not persuasive for the following reasons. First, with respect to claims 3 and 14, the features of these claims are taught by Telesio. In that regard, the claimed wear strips recited in claim 3 read on Telesio's galvanized surfaces 66 and the claimed hollow tubular form recited in claim 14 reads on the hollow guide shoes 64 of Telesio as shown in Figure 4. Second, with respect to claims 8, 11, 16 and 17, the examiner determined (answer, pp. 3-4) that these features were conventional and thereby would have been obvious to modify Telesio. Thus, the examiner did not rely solely on the cited prior art in rejecting these claims. As to the obviousness of modifying Telesio by these conventional features, we note that the appellant has not contested these determinations of the examiner and we see no reason to reverse those determinations.

For the reasons set forth above, the decision of the examiner to reject claims 3, 8, 11, 14 and 16 to 19 under 35 U.S.C. § 103 is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 3, 8, 11 to 14 and 16 to 20 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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HAUGEN AND NIKOLAI  
820 INTERNATIONAL CENTRE  
900 SECOND AVENUE SOUTH  
MINNEAPOLIS, MN 55402-3325

APPEAL NO. 97-1175 - JUDGE NASE  
APPLICATION NO. 08/383,361

APJ NASE

APJ STAAB

APJ CALVERT

DECISION: **AFFIRMED**

Prepared By: Gloria Henderson

**DRAFT TYPED:** 01 Sep 98

**FINAL TYPED:**